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10/010,486	12/07/2001	William Frantz	PD-201169	6438

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EXAMINER

LU, SHIRLEY

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2612

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GROUP 2600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/010,486
Filing Date: December 07, 2001
Appellant(s): FRANTZ, WILLIAM

MAILED

JUL 25 2007

GROUP 2600

William T. Frantz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 11/27/06 appealing from the Office action mailed 7/11/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: claims 1-19 are rejected under 35 U.S.C 102(e).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6698020 Zigmond et al.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim(s) 1-19 is/are rejected under 35 U.S.C. 102(e) as being anticipated by Zigmond (6698020).

As to claim 1, Zigmond discloses a method in a system:

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A communication system for delivering audio and/or video message to a subscriber, comprising: a transmitter for transmitting broadcast programming and audio and/or video messages to a subscribers as separate data streams (fig. 4, elements 62, 66; [8, 1-48]);

at least one communication apparatus having receiver circuitry for receiving said audio and/or video messages data stream separate from receiving the data stream containing said broadcast programming, each subscriber having at least one communication apparatus (fig. 4, element 60; [8, 1-37]), said at least one communication apparatus further including:

a processor operatively connected to a mass storage device for processing and storing said received audio and/or video messages to form stored audio and/or video (fig. 4, element 62; [8, 1-11]),

a sensor generating a using message indicative of a subscriber using the broadcast programming wherein said processor accesses said stored audio and/or video messages for display in place of the broadcast programming being currently used by the subscribers in response to the using message ([7, 26-36]; [8, 29-54]).

As to claim 2,

said processor displays said stored audio and/or video messages based upon detecting a trigger [8, 29-54].

As to claim 3,

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said trigger comprises instructions received together with the audio and/or video messages or from instructions embedded in the broadcast content or both [8, 29-54].

As to claim 4,

said transmitter further includes: an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating said data packet into a suitable frequency band for reception; and a satellite for receiving said data packet via an airlink from the uplink facility, and for transmitting the data packet to said at least one communication apparatus (fig. 7; [17, 50] to [18, 37]).

As to claim 5,

said audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers ([18, 29-37]; [6, 1-11]).

As to claim 6,

content providers are assured that an advertisement or commercial reaches the desired subscribers as the content provider knows the targeted subscriber, when the advertisement or commercial will be provided on a device operatively connected to the subscriber's communication apparatus, and the amount or length of time the advertisement or commercial is to be provided to the subscriber ([10, 47-64]; [9, 21-38]; [9, 55] to [10, 3]).

As to claim 7,

the communication apparatus is a receiver or a set top box ([10, 3-15]; [7, 37-49]).

As to claim 8,

(see claim 1).

As to claim 9,

(see claim 2).

As to claim 10,

(see claim 3).

As to claim 11,

(see claim 4).

As to claim 12,

(see claim 5).

As to claim 13,

(see claim 6).

As to claim 14,

(see claim 1).

As to claim 15,

(see claim 2).

As to claim 16,

(see claim 3).

As to claim 17,

(see claim 4).

As to claim 18,

(see claim 5).

As to claim 19,

(see claim 6).

(10) Response to Argument

a. Rejection under 35 U.S.C. 102(b)

I. Appellant argues, "The problem with the Zigmond reference...is that the user is not present..."

In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., 'presence of the user') are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Even if the “presence of the user” were claimed, Zigmond goes into further detail about ad insertion device 60: ‘the ad insertion device 60 monitors actions of the viewer during display. Examples of such actions include channel changes during display of the selected advertisement, request by the viewer for additional information, feedback provided by the viewer in response to the advertisement...the user may be presented with multiple ads and asked to select one for viewing’ (column 9, lines 20-40).

Furthermore, Zigmond discloses: said processor (insertion device 60) accesses said stored audio and/or video messages (advertisement) for display (household display) in the place of the broadcast program (video switch 68 toggles between video programming feed 52 and selected advertisements (column 8, lines 29-55)) being currently used by the subscribers in response to the using message (“an advertisement 59 that has been selected according to any desired method is then displayed to the viewer using display device 58” (column 7, lines 25-36)). Zigmond discloses further details about ad insertion device 60: ‘ad insertion device 60 monitors actions of the viewer during display’ and that ‘the user may be presented with multiple ads and asked to select one for viewing” (column 9, lines 20-36). It clearly follows that Zigmond also discloses: a sensor generating a using message indicative of a subscriber using the broadcast programming” (a subscriber’s actions are being monitored by ad insertion device 60, which are then complied and reported, which effectively “generates a using message” (column 9, lines 20-36)).

Therefore, Zigmond indeed discloses the claimed limitation as recited by claim 1, as discussed above.

II. Appellant argues that Zigmond does not disclose “packetized signals.”

In response In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “packetized signals”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

However, Zigmond does indeed disclose “data packets” and a “packetized data stream,” as recited in appellant's claim 4 (column 17, line 50 through column 18, line 18). A packet is a unit of information transmitted as a whole from one device to another on a network. Clearly, Zigmond discloses information (advertisement streams 64) transmitted from one device (ad source 62) to another on a network (satellite service provider 130; see figure 7).

Furthermore, Zigmond discloses: said transmitter further includes: an uplink facility for digitally encoding and multiplexing said audio and/or video messages (advertisements) into a packetized data stream (see paragraph above), and for encoding and modulating said data packet into a suitable frequency band for reception; and a satellite for receiving said data packet via an airlink from the uplink facility, and for

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transmitting the data packet to said at least one communication apparatus ("an ad source 62 provides an advertisement stream 64, which is also transmitted by satellite service provider 130. Satellite 134 transmits signals 136 that include programming feeds 38 and 39 and advertisement stream 64 to a receiver unit 138 at household 56. In this manner, the system of FIG. 7 allows video programming and an advertisement stream to reach household 56"; fig. 7; [17, 50] to [18, 37]).

Therefore, Zigmond indeed discloses the claimed limitation as recited by claim 4, as discussed above.

(11) Related Proceeding(s) Appendix

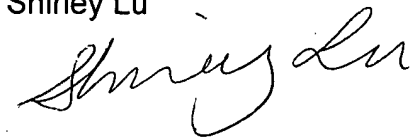
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Shirley Lu




Conferees:

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